

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEVEN STELLY

v.

KROGER TEXAS L.P.

§
§
§
§
§

CASE NO. 4:21-cv-422

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant Kroger Texas L.P. (hereinafter referred to as “Defendant”) while fully reserving all rights and defenses, files this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division. Removal is proper under 28 U.S.C. §§1332 and 1441(a) because this is an action over which the United States District Court for the Southern District of Texas, Houston Division, has original diversity jurisdiction, as it is an action between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its Notice of Removal, Defendant respectfully would show as follows:

I. GROUNDS FOR REMOVAL

1. This case is removable to this Court based on diversity jurisdiction under 28 U.S.C. §§1332 and 1441(a).
2. Plaintiff Steven Stelly (hereinafter referred to as “Plaintiff”) is a citizen of the State of Texas who resides in Harris County, Texas.
3. Defendant Kroger Texas L.P. is a limited partnership organized and existing under the laws of the State of Ohio.
4. As described more fully below, Plaintiff seeks to recover from the Defendant an amount in excess of \$75,000.00, excluding interest and costs, in her state court action.

II. PENDING STATE SUIT

5. On or about October 30, 2020, Plaintiff filed a civil action against Defendant in Cause No. 2020-70264 styled *Steven Stelly v. Kroger Texas, L.P.* in the 269th District Court of Harris County, Texas.¹

6. According to Plaintiff's Original Petition, he was allegedly injured at a Kroger store located in Harris County, Texas, which was allegedly owned and operated by Defendant.²

7. Plaintiff claims that while at the store he "he slipped on a foreign liquid substance and fell causing him to suffer...bodily injuries."³

8. The name and address of the Court from which the case is being removed is:

269th District Court
Harris County Civil Courthouse
201 Caroline
Houston, Texas 77002

III. STATE COURT DOCUMENTS

9. The following documents are attached to this Notice of Removal:

Exhibit "A" Plaintiff's Original Petition.

Exhibit "B" Notice of Service of Process.

Exhibit "C" Defendant's Original Answer.

Exhibit "D" An index of matters being filed.

D-1 Copy of the state court Docket Sheet/Record.

D-2 Copy of process.

D-3 A list of all counsel of record, addresses, telephone numbers, and parties.

D-4 Civil Cover Sheet.

¹ See Pl.'s Original Pet. attached hereto as Exhibit A.

² *Id.* at p. 2.

³ *Id.*

IV. TIMING OF REMOVAL

10. Defendant was served with Plaintiff's Original Petition through its registered agent for service of process, CSC Corporation Service Company, on January 7, 2021.⁴ This Notice of Removal is being filed within 30 days of service of the Original Petition upon Defendant and is timely filed under 28 U.S.C. §1446(b).

V. JURISDICTION

11. Pursuant to 28 U.S.C. §1332, a defendant has a right to remove a case to federal court if the case involves a dispute between completely diverse parties and the amount in controversy, excluding interest and costs, exceeds \$75,000.00.

12. Plaintiff seeks damages of more than \$200,000 but not more than \$1,000,000.⁵ Based on the allegations in Plaintiff's Original Petition, this matter is removable to this Court under 28 U.S.C. §1332 because the amount in controversy, excluding interests and costs, exceeds \$75,000.00.

13. Plaintiff also alleges in her Original Petition that she is a resident of Texas.⁶

14. Defendant Kroger Texas L.P. is a limited partnership organized and existing under the laws of the State of Ohio. The following are the partners of Defendant, Kroger Texas L.P., all of whom are incorporated in and citizens of the State of Ohio:

- a. KRGP, Inc. is the General Partner of Kroger Texas L.P. KRGP, Inc. is incorporated in the State of Ohio and its principal places of business is in the State of Ohio.
- b. KRLP, Inc. is the Limited Partner of Kroger Texas L.P. KRLP, Inc. is incorporated in the State of Ohio and its principal places of business is in the State of Ohio.

⁴ See Notice of Service of Process attached hereto as Exhibit B.

⁵ See Pl.'s Original P. attached as Exhibit A, p. 9.

⁶ *Id.* at p. 1.

15. Accordingly, there exists complete diversity of citizenship between Plaintiff and Defendant under 28 U.S.C. §1332.

VI. VENUE

16. Pursuant to 28 U.S.C. §1441(a), venue for this action is proper in the United States District Court for the Southern District of Texas, Houston Division, as it is the federal judicial district that encompasses the 269th District Court of Harris County, Texas where the state action was originally filed.

VII. NOTICE TO ADVERSE PARTIES AND TO STATE COURT

17. As the removing party, Defendant will give Plaintiff prompt written notice of this Notice of Removal as required by 28 U.S.C. §1446(d).

18. Defendant will also file a copy of this Notice of Removal with the 333rd District Court, where the state court action is currently pending, as required by 28 U.S.C. §1446(d).

VIII. ANSWER

19. Defendant filed an answer in the state court action. By removing this action to this Court, Defendant does not waive any defenses, objections, or motions available to it under state or federal law, and will timely file responsive pleadings to Plaintiff's Original Petition in this Court as well.

PRAYER

20. For these reasons and in conformity with 28 U.S.C. §1446, Defendant respectfully removes the civil action styled *Gwen Bryant v. Kroger Texas, L.P.* and bearing Cause No. 2020-70264 on the docket of the 269th District Court of Harris County, Texas. Defendant prays for such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted by,

/s/ Adraon D. Greene

Adraon D. Greene

Attorney-in-Charge

State Bar No. 24014533

Federal Bar No. 25029

agreene@gallowaylawfirm.com

Daniel D. Schick

State Bar No. 24098387

Federal Bar No. 2979655

dschick@gallowaylawfirm.com

OF COUNSEL:

GALLOWAY, JOHNSON, TOMPKINS

BURR & SMITH

1301 McKinney Suite 1400

Houston, Texas 77010

(713) 599-0700 – Phone

(713) 599-0777 – Fax

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2021, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. I also certify that I have forwarded this filing by regular U.S. Mail, postage pre-paid, this same day to all non-CM/ECF participants.

Via CM/ECF:

J. Joshua Collum

COLLUM LAW FIRM, PLLC

P.O. Box 6901

Houston, Texas 77256

ATTORNEY FOR PLAINTIFF

/s/ Daniel D. Schick

Adraon D. Greene

Daniel D. Schick